

Mail Stop Interference  
P.O. Box 1450  
Alexandria VA 22313-1450  
Tel: 571-272-4683  
Fax: 571-273-0042

Paper 1  
Filed: December 23, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Advanced Research and Technology Institute, Inc.**  
Junior Party  
(U.S. Patent Applications 08/948,764, 08/955,572 and 10/027,199).

v.

**Immunex Corporation**  
Senior Party  
(U.S. Patent 7,211,259),

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Patent Interference No. 105,662 (MPT)  
(Technology Center 1600)

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**DECLARATION - Bd.R. 203(b)<sup>1</sup>**

- 1        **Part A. Declaration of interference**
- 2        An interference is declared (35 U.S.C. § 135(a)) between the above-
- 3        identified parties. Details of the application(s), patent (if any), reissue application

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<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 (if any), count(s) and claims designated as corresponding or as not corresponding  
2 to the count(s) appear in Parts E and F of this DECLARATION.

3 **Part B. Judge managing the interference**

4 Administrative Patent Judge Michael P. Tierney has been designated to  
5 manage the interference. Bd. R. 104(a).

6 **Part C. Standing order**

7 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this  
8 DECLARATION. The STANDING ORDER applies to this interference.

9 **Part D. Initial conference call**

10 A telephone conference call to discuss the interference is set for **2:00 p.m.**  
11 on **February 10, 2009** (the Board will initiate the call).

12 No later than four business days prior to the conference call, each party shall  
13 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;  
14 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

15 A sample schedule for taking action during the motion phase appears as  
16 Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the  
17 schedule prior to the conference call and to agree on dates for taking action. A  
18 typical motion period lasts approximately eight (8) months. Counsel should be  
19 prepared to justify any request for a shorter or longer period.

#### **Part E. Identification and order of the parties**

## Senior Party

Named Inventors: Raymond G. Goodwin, Seattle, WA

Craig A. Smith, Seattle, WA

Involved Patent: U.S. Patent No. 7,211,259, issued May 1, 2007, based on U.S. Application 08/910,449, filed August 5, 1997.

Title: 4-1BB Polypeptides and DNA Encoding 4-1BB Polypeptides

Assignee: Immunex Corporation

## **Junior Party**

Named Inventor: Byoung Se Kwon, Carmel Indiana

### Involved Applications:

- i) U.S. Application 10/027,199, filed December 20, 2001, entitled Receptor and Related Products and Methods;
- ii) U.S. Application 08/955,572, filed October 22, 1997, entitled Human H-4-1BB Protein;
- iii) U.S. Application 08/948,764, filed October 10, 1997, entitled Human Receptor H4-1BB Polypeptides and Methods For Use.

Assignee: Advanced Research and Technology Institute, Inc.

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1                   **Part F. Count and claims of the parties**

2                   Count 1

3                   A compound according to claims 7 or 16 of U.S. Patent 7,211,259 or  
4                   according to claim 24 of U.S. Application 08/955,572 or claim 1 of U.S.  
5                   Application 10/027,199.

6

7                   The claims of the parties are:

8                   Immunex '259: 1-19  
9                   Advanced Research and Technology Inst. '572: 5-6, 24, 26, 27-31  
10                  Advanced Research and Technology Inst. '764: 19-24, 26-36  
11                  Advanced Research and Technology Inst. '199: 1-3 and 19-23

13                  The claims of the parties which correspond to Count 1 are:

14                  Immunex '259: 1-2, 6-19  
15                  Advanced Research and Technology Inst. '572: 5-6, 24, 26-31<sup>2</sup>  
16                  Advanced Research and Technology Inst. '764: 19-24, 26, 28-36  
17                  Advanced Research and Technology Inst. '199: 1, 19 and 21-23

19                  The claims of the parties which do not correspond to Count 1, and therefore  
20                  are not involved in the interference, are:

21                  Immunex '259: 3-5  
22                  Advanced Research and Technology Inst. '572: None  
23                  Advanced Research and Technology Inst. '764: 27<sup>3</sup>  
24                  Advanced Research and Technology Inst. '199: 2, 3 and 20

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<sup>2</sup> '572 Claim 31 incorrectly refers to amino acid residues "1186" as opposed to "1-186."

<sup>3</sup> '764 claim 27 depends from previously cancelled claim 25.

1 The parties are accorded the following benefit for Count 1:

2                   Immunex Corporation

3                   i)       U.S. Application 08/236,918, filed May 6, 1994.

4                   ii)      U.S. Application 08/060,843, filed **May 7, 1993.**

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6                   Advanced Research and Technology Institute Inc.:

7                   i)       U.S. Application 08/461,652, filed June 5, 1995;

8                   ii)      U.S. Application 08/122,796, filed **September 16, 1993.**

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1                   **Part G. Heading to be used on papers**

2                   The following heading must be used on all papers filed in this interference,  
3    see SO ¶ 106.1.1:

4                   **UNITED STATES PATENT AND TRADEMARK OFFICE**

5                   **BEFORE THE BOARD OF PATENT APPEALS**  
6                   **AND INTERFERENCES**

7  
8  
9  
10                   **Advanced Research and Technology Institute, Inc.**  
                         Junior Party  
(U.S. Patent Applications 08/948,764, 08/955,572 and 10/027,199).

v.

**Immunex Corporation**  
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(U.S. Patent 7,211,259),

Patent Interference No. 105,662 (MPT)  
(Technology Center 1600)

1                   **Part H. Order form for requesting file copies**

2                   When requesting copies of files, use of SO Form 4 will greatly expedite

3                   processing of the request. Please attach a copy of Parts E and F of this

4                   DECLARATION with a hand-drawn circle around the patents and applications for

5                   which a copy of a file wrapper is requested.

6                   /Michael P. Tierney/

7                   Administrative Patent Judge

12                   Attorney for Advanced Research and Technology Institute, Inc.:

14                   Barnes & Thornburg, LLP

15                   11 South Meridian

16                   Indianapolis, IN 46204

18                   Attorney for Immunex Corporation:

20                   Immunex Corporation

21                   Law Department

22                   1201 Amgen Court West

23                   Seattle, WA 98119

28                   Enc:

29                   Copy of STANDING ORDER

30                   Copy U.S. Patent 7,211,259

31                   Copy of claims of 08/948,764, 08/955,572 and 10/027,199

33                   Revised 3 January 2006